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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 U.S. BANK, N.A., Successor Trustee
12 to LASALLE BANK NATIONAL
13 ASSOCIATION, on behalf of the
14 HOLDERS OF BEAR STEARNS
15 ASSET BACKED SECURITIES 1
16 TRUST 2006-HE10, ASSET-
17 BACKED CERTIFICATES SERIES
18 2006-HE10,

19 Plaintiff,

20 v.

21 HOLLY L. LEWIS, KENNETH W.
22 LEWIS, and DOES I through X,
23 inclusive,

24 Defendants.
25

**Case No. ED CV 17-01236-BRO
(RAOx)**

**ORDER REMANDING ACTION
AND DENYING REQUEST TO
PROCEED IN FORMA PAUPERIS**

26 **I.**

27 **FACTUAL BACKGROUND**

28 Plaintiff U.S. Bank, N.A., Successor Trustee to LaSalle Bank National Association, on behalf of the Holders of Bear Stearns Asset Backed Securities 1 Trust 2006-HE10, Asset-Backed Certificates Series 2006-HE10 (“Plaintiff”) filed an unlawful detainer action in San Bernardino County Superior Court against Defendants Holly L. Lewis, Kenneth W. Lewis, and Does I through X, on March

1 27, 2017. Notice of Removal (“Removal”) and Attached Complaint for Unlawful
2 Detainer (“Compl.”). Dkt. No. 1. Defendants are allegedly unauthorized occupants
3 of real property located in Big Bear City, California (“the property”). Compl., ¶¶ 1,
4 3, 8-9. Plaintiff is the owner of the property. *Id.* at ¶¶ 1, 4-5.

5 Defendant Holly L. Lewis (“Defendant”) filed a Notice of Removal on June
6 21, 2017, claiming that Plaintiff violated the Real Estate Settlement Procedures Act,
7 12 U.S.C. § 2601 (“RESPA”). Removal at 2. The same day, Defendant filed a
8 request to proceed *in forma pauperis*. Dkt. No. 3.

9 II.

10 DISCUSSION

11 Federal courts are courts of limited jurisdiction, having subject matter
12 jurisdiction only over matters authorized by the Constitution and statute. *See, e.g.,*
13 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128
14 L.Ed.2d 391 (1994). It is this Court’s duty always to examine its own subject
15 matter jurisdiction, *see Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235,
16 163 L.Ed.2d 1097 (2006), and the Court may remand a case summarily if there is
17 an obvious jurisdictional issue. *Cf. Scholastic Entm’t, Inc. v. Fox Entm’t Grp., Inc.*,
18 336 F.3d 982, 985 (9th Cir. 2003) (“While a party is entitled to notice and an
19 opportunity to respond when a court contemplates dismissing a claim on the merits,
20 it is not so when the dismissal is for lack of subject matter jurisdiction.”) (omitting
21 internal citations). A defendant attempting to remove an action from state to
22 federal court bears the burden of proving that jurisdiction exists. *See Scott v.*
23 *Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). Further, a “strong presumption”
24 against removal jurisdiction exists. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th
25 Cir. 1992).

26 Defendant asserts that this Court has subject matter jurisdiction due to the
27 existence of a federal question. Removal at 2-5. Section 1441 provides, in relevant
28 part, that a defendant may remove to federal court a civil action in state court of

1 which the federal court has original jurisdiction. *See* 28 U.S.C. § 1441(a). Section
2 1331 provides that federal “district courts shall have original jurisdiction of all civil
3 actions arising under the Constitution, laws, or treaties of the United States.” *See*
4 *id.* § 1331.

5 Here, the Court’s review of the Notice of Removal and attached Complaint,
6 makes clear that this Court does not have federal question jurisdiction over the
7 instant matter under 28 U.S.C. § 1331. First, there is no federal question apparent
8 from the face of the Complaint, which appears to allege only a simple unlawful
9 detainer cause of action. *See Wescom Credit Union v. Dudley*, No. CV 10-8203
10 GAF (SSx), 2010 WL 4916578, *2 (C.D.Cal. Nov. 22, 2010) (“An unlawful
11 detainer action does not arise under federal law.”) (citation omitted); *IndyMac*
12 *Federal Bank, F.S.B. v. Ocampo*, No. EDCV 09-2337 PA(DTBx), 2010 WL
13 234828, at *2 (C.D.Cal. Jan. 13, 2010) (remanding an action to state court for lack
14 of subject matter jurisdiction where plaintiff’s complaint contained only an
15 unlawful detainer claim).

16 Second, there is no merit to Defendant’s contention that federal question
17 jurisdiction exists because Defendant’s Answer raises issues arising under RESPA.
18 Removal at 2. It is well settled that a “case may not be removed to federal court on
19 the basis of a federal defense . . . even if the defense is anticipated in the plaintiff’s
20 complaint, and even if both parties concede that the federal defense is the only
21 question truly at issue.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393, 107 S.Ct.
22 2425, 2430, 96 L.Ed.2d 318 (1987). Thus, to the extent Defendant’s defenses to the
23 unlawful detainer action are based on alleged violations of federal law, those
24 defenses do not provide a basis for federal question jurisdiction. *See id.* Because
25 Plaintiff’s complaint does not present a federal question, either on its face or as
26 artfully pled, the court lacks jurisdiction under 28 U.S.C. § 1331.

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28 III.

1 **CONCLUSION**

2 Accordingly, IT IS ORDERED that this case is REMANDED to the Superior
3 Court of California, County of Los Angeles, forthwith.

4 IT IS FURTHER ORDERED that Defendant's Request to Proceed In Forma
5 Pauperis is DENIED as moot.

6 IT IS SO ORDERED.

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8 DATED: June 29, 2017

9 
10 BEVERLY REID O'CONNELL
UNITED STATES DISTRICT JUDGE

11 Presented by:

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13 _____
14 ROZELLA A. OLIVER
UNITED STATES MAGISTRATE JUDGE